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issues of right. *Farquharson* v. *Morgan*, [1894] 1 Q. B. 552; *Worthington* v. *Jeffries*, L. R. 10 C. P. 239, 280; *Chambers* v. *Green*, L. R. 20 Eq. 552, 555. Logically prohibition is the exact counterpart of mandamus. See *Thomas* v. *Mead*, 36 Mo. 232, 247. The latter is invoked to compel exercise of jurisdiction by an inferior court; the former, to prohibit a threatened usurpation or abuse of jurisdiction. *In the Matter of Turner*, 5 Oh. 542; *Connecticut River R. Co.* v. *County Commissioners of Franklin*, 127 Mass. 50. Mandamus, like prohibition, originated as a royal prerogative issuing at the discretion of the king in the exercise of his police powers. See *Awdley* v. *Joy*, Poph. 176; *King* v. *Barker*, 1 W. Bl. 351; 3 Bl. Comm. 111. The obvious repugnance of this conception to our form of government has led the majority of American courts to treat mandamus as issuing of right, and hence as subject to review. *Hartman* v. *Greenhow*, 102 U. S. 672; *Gilman* v. *Bassett*, 33 Conn. 298. By applying the same reasoning to prohibition, the writ should issue of right, even when as in the principal case an inadequate legal remedy is also available.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — COMBINATION OF COMPETING RAILROADS. — The Union Pacific Railroad Company bought a controlling interest in the stock of the Southern Pacific Company. The two railroads did a large amount of competitive business, though such business was but a small part of all the traffic carried by them. *Held*, that the transaction constitutes a combination in restraint of trade under the Sherman Anti-Trust Law. *United States* v. *Union Pacific R. Co.*, 226 U. S. 61, 33 Sup. Ct. 53.

The Standard Oil case, holding that only undue restraints of trade are forbidden by the Sherman Anti-Trust Law, intimated that that combination might have been lawful had it not been for the unfair methods used in crushing competitors. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 31 Sup. Ct. 502. See 25 HARV. L. REV. 31. Before that decision a combination of competing railroads was clearly regarded as within the act. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 17 Sup. Ct. 540; *United States* v. *Joint Traffic Association*, 171 U. S. 505, 19 Sup. Ct. 25; *Northern Securities Co.* v. *United States*, 193 U. S. 197, 24 Sup. Ct. 436. The merger of competing railroads was considered inimical to the public welfare because of their public nature and practical monopoly. See *Northern Securities Co.* v. *United States*, 193 U. S. 197, 363, 24 Sup. Ct. 436, 467; *Louisville & Nashville R. Co.* v. *Kentucky*, 161 U. S. 677, 697, 698, 16 Sup. Ct. 714, 722. The principal case affirms the principle that the suppression of outside competitors is not essential to constitute undue restraint of trade in such a case, whatever may be the rule in regard to industrial combinations. See 25 HARV. L. REV. 71. The case further holds that even though the competitive business constitutes but a small portion of the total business transacted, if its amount is considerable the entire combination is illegal. The result shows, also, consistently with the "rule of reason" adopted in the Standard Oil case, that the form of the transaction producing the undue restraint is immaterial. *United States* v. *American Tobacco Co.*, 221 U. S. 106, 31 Sup. Ct. 632. Conceding the undue restraint, the purchase by one company of a controlling interest in the stock of a competitor is a "combination" within the act. *United States* v. *Terminal R. Association of St. Louis*, 224 U. S. 383, 32 Sup. Ct. 507.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — CONTROL OF COAL MARKET BY CONTRACTS TO PURCHASE OUTPUT OF COMPETITORS. — The six defendant carriers controlled the means of transportation from the district in which is located all the anthracite coal of the country. The proposed building of a new railroad into the district was defeated by the carriers' taking the stock in a new company formed by them to purchase the coal property from

which the new road expected to carry coal to the market. This purchase, with the already large holdings of the carriers, gave them control over seventy-five per cent of the annual output and ninety per cent of the unmined coal lands. By agreement the carriers individually contracted to purchase the annual output of independent coal operators, securing to the carriers in perpetuity one-half the tonnage of the independent operators. *Held*, that the purchase of the coal property and the contracts with the independent operators are in violation of the Sherman Anti-Trust Law. *United States* v. *Reading Company*, 226 U. S. 324, 33 Sup. Ct. 90.

Combinations by loose agreement, as where competitors agree not to bid against each other or to fix selling prices, have long been held offensive to the Sherman Anti-Trust Act. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 20 Sup. Ct. 96; *Swift* v. *United States*, 196 U. S. 375, 25 Sup. Ct. 276. Consolidations of competing carriers are held within the act; and also consolidations by any class of competitors interfering with outside competitors. See discussion of *United States* v. *Union Pacific R. Co.*, *supra*. This latter principle would seem to cover the purchase of the coal property in the principal case. But the contracts to purchase the output of the independent operators did not interfere with any outside competitors, nor did they limit competition between the contracting railroads. And they partake rather of the nature of consolidation than of agreements to refrain from competition, for some of the advantages that flow from centralized management are present. These contracts if upheld, however, would give the defendants a dominating control over the anthracite coal business which would be dangerous to the public welfare, since the defendants would be free from the check of potential competition. The Supreme Court in an analogous case held illegal a consolidation by which all the available terminal facilities were acquired, though in that case there was the added fact of an arbitrary use of the control acquired. *United States* v. *Terminal R. Association of St. Louis*, 224 U. S. 383, 32 Sup. Ct. 507. It does not necessarily follow from these holdings that the elimination of any existing competition when new competitors may possibly arise is illegal.

SUBROGATION — RIGHTS OF ONE FORCED TO PAY DEBT AGAINST THE REAL DEBTOR. — The cashier of a bank, without authority, allowed the defendant to overdraw her account. Upon discovery of the shortage he gave the bank his note for the amount. He became bankrupt, and the bank established its claim against the assets. The assignee then sued the defendant for the full amount of the overdraft. *Held*, that the assignee is subrogated to the rights of the bank and can recover and retain the full amount of the overdraft. *Mentz's Assignee* v. *Mahoney*, 150 S. W. 503 (Ky.).

Subrogation is simply a method of preventing unjust enrichment. See 26 HARV. L. REV. 261. But in a proper case it may be denied on the ground that one who seeks subrogation must have clean hands. *Hays' Estate*, 159 Pa. 381, 28 Atl. 158; *Johnson* v. *Moore*, 33 Kan. 90, 5 Pac. 406. Thus where the plaintiff makes his wrong against the defendant the basis of his claim, or where his misconduct is dangerous to the public, he may be barred. *Guckenheimer* v. *Angevine*, 81 N. Y. 394; *Ramsay's Estate* v. *Whitbeck*, 183 Ill. 550, 56 N. E. 322. *Cf. Worden* v. *California Fig Syrup Co.*, 187 U. S. 516, 23 Sup. Ct. 161. Whatever the limits of the doctrine may be, in the principal case the wrong is atoned for, and does not seem to be so closely connected with the recovery of the overdraft as to defeat the action. Subrogation should always be permitted when, as in the principal case, it will prevent unjust enrichment, and the plaintiff is entitled in equity to relief. *In re McBride*, 19 N. B. R. 452; *Rees* v. *Eames*, 20 Ill. 282. See *Huff* v. *Hatch*, 2 Disn. (Ohio) 63, 67. *Contra*, *Doyle* v. *Glenn*, 4 Humph. (Tenn.) 309. But the court goes too far in saying that the plaintiff, after recovery, can retain the full amount of the over-